THE NEW YORK STATUTORY PROVISIONS FOR CRIMINAL APPEALS. — In giving the opinion of the New York Court of Appeals, that the jury below were not only justified in finding, but forced by the evidence to find, the prisoner guilty of murder, Chief Justice Ruger frees his mind of its load of disgust with the Statute of 1887, which allows appeals in capital cases directly from the trial to the Court of Appeals, at the expense of the county, without reference to whether errors were committed at the trial or not. The statute simply invites the criminal to take a delay of many months, without reason, as without risk or expense, to see if the upper court can find any ground, not perceptible to counsel on either side, upon which to base a reversal of the jury's finding on questions of fact. The Court of Appeals may chafe at the absurdity, but the only course open to it is to waste its time and wonder at the weirdness of the New York law. Mercy is well, but the community has rights.

## RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the court. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

AGENCY — MASTER AND SERVANT — DEFECTIVE APPLIANCES. — It is not incumbent on a master who has caused a scaffold to be erected on which planks, suitable in quantity and quality, are laid to walk upon in the customary manner, without being fastened, to see to it that these planks are adjusted and in proper place at all times. The adjustment of such planks is incident to the service required of a servant who uses the same. *Jennings* v. *Iron Bay Co.*, 49 N. W. Rep. 685 (Minn.).

AGENCY — MASTER AND SERVANT — DUTY TO PROVIDE SUITABLE APPLIANCES. — The plaintiff was employed in the defendant's oil-mill. It was the duty of another servant to supply him, while working, with bags free from holes. The plaintiff was injured in consequence of receiving a defective bag. *Held*, that although the defendant had employed a person for the express purpose of repairing the bags, he is liable to the plaintiff for damages for an injury caused by the negligent performance of this work. *Bowen* v. *Carolina, C. G. & C. R. Co.*, 13 S. E. Rep. 419 (S. C.).

BILLS AND NOTES — ANOMALOUS INDORSEMENTS. — Where a party indorses a note before the payee of the note, such an indorsement has the effect of an ordinary indorsement, and the indorser is liable to the payee and subsequent holders, in the order in which he stands upon the note. *Spencer* v. *Allerton*, 22 Atl. Rep. 778 (Conn.).

Although based upon the construction of a statute, this case is interesting as putting aside the former Connecticut doctrine that such an indorser was a mere guarantor, and bringing the law of that State into harmony with the law merchant.

BILLS AND NOTES — ANOMALOUS INDORSEMENT. — *Held*, that the Illinois Supreme Court is fully committed to the doctrine that when a third party writes his name across the back of a promissory note, the presumption from the indorsement is that he assumed the liability of guarantor; yet parol evidence may be produced to prove what liability was in fact assumed. *Kingsland* v. *Koeppe*, 28 N. E. Rep. 48 (Ill.).

BILLS AND NOTES — CONDITIONAL PAYMENT. — The acceptance of a note "for," or "on account of," or "in payment of" an existing debt, in the absence of an express agreement or understanding that it is taken in satisfaction or discharge of the debt, is to be understood and interpreted as a conditional payment only. *Combination Steel and Iron Co.* v. *St. Paul City Ry. Co.*, 49 N. W. Rep. 744 (Minn.).

BILLS AND NOTES — FORGED BILL — FICTITIOUS PAYEE — BILLS OF EXCHANGE ACT. — The bills in question were entirely a forgery, except the acceptance, which was genuine, but procured by fraud. They were payable to the order of an existing person in whose favor the acceptor had often accepted similar genuine bills. But the bills in question were never delivered to the person named as payee, and the forger had not intended that they should be. The forger collected the amount of the bills from the bank of the acceptor upon a forged indorsement of the payee's name. The court held that the bank could charge its depositor with the amount so paid. The majority of the court reach this conclusion by the following steps: 1. The acceptor is estopped to deny that there are bills of exchange. 2. The Bills of Exchange Act provides that "where the payee is a fictitious or non-existent person," the bill may be treated as payable to bearer. A payee is fictitious, even though an existing person, if the drawer uses his name with no intention that payment shall be made to him. In order to treat a bill as payable to bearer as against the acceptor, it is not necessary under this statute that the acceptor should be aware of the non-existence of the payee. These bills were payable to bearer, and were therefore paid by the bank according to their tenor. *Bank of England* v. *Vagliano Brothers* [1891] A. C. 107.

BILLS AND NOTES — LIABILITY OF SELLER — WARRANTY. — The *bona fide* seller of negotiable bonds which are fraudulent reissues of genuine bonds is not liable to the purchaser on an implied warranty. *Meyer* v. *Richards*, 46 Fed. Rep. 727.

COMMON CARRIERS — TAXABLE PROPERTY. — A Michigan statute exempts all necessary buildings used by a railroad corporation for its passenger and freight business. *Held*, that a grain elevator owned and operated by such corporation is within the provisions of the statute, and is not subject to general taxation. "It is complainant's grain depot, used in the business of transportation, and only used as a warehouse in connection with its regular business as a common carrier." *Detroit Union R.R. Depot & Station Co.* v. *City of Detroit*, 50 N. W. Rep. 302 (Mich.).

COMMON CARRIERS — TELEPHONE COMPANIES. — The defendant, a telephone company, refused to furnish telephone instruments to the plaintiff, a telegraph company carrying on business in the same territory with defendant, unless the plaintiff agreed not to use the telephone in connection with the business of transmitting telegrams. The defendant was only a licensee, and the licensor, owner of all the patents on telephones, had agreed with a telegraph company, a rival of the plaintiff, to allow *it* the use of the telephones, but to deny this privilege to all other companies. *Held*, the telephone company is a common carrier, and must serve all persons alike. The contract with the rival telegraph company is void. *State* v. *Del. & A. Tel. & Tel. Co.*, 47 Fed. Rep. 633.

CONSTITUTIONAL LAW — POLICE POWER — ELECTRIC WIRES. — Where the evidence shows that the stretching of electric wires over and upon the roofs of buildings is extremely dangerous, both as being liable to originate fires and as obstructions to the extinguishment of fires otherwise originated, a city ordinance absolutely prohibiting the practice is a valid exercise of the police power. *Electric Co.* v. *San Francisco*, 45 Fed. Rep. 593.

CONTRACT — HUSBAND AND WIFE — RESTRAINT OF MARRIAGE. — A contract by which a husband agrees to pay his divorced wife $45 a month for her support "for so long a time as she does not marry again" is not a restraint of marriage, nor in any wise against public policy. *Jones* v. *Jones*, 27 Pac. Rep. 85 (Col.).

CONTRACT — INSURANCE — IMPUTATION OF KNOWLEDGE. — Where a corporation organized to transport, store, and insure petroleum, whose custom it is to contract with its customers to insure the oil in its tanks at its own expense, procures insurance thereon without any written request or representation as to ownership, the insurers cannot escape liability on the ground that the assured did not own the oil, since the insurers are chargeable with knowledge of the nature of the business of the assured, and will be held to have assumed the risk of any loss which it might sustain by reason of fire. *Western & Atl. Pipe Lines* v. *Home Ins. Co.*, 22 Atl. Rep. 665 (Pa.).

CORPORATIONS — BILL BY STOCKHOLDER AGAINST DIRECTORS — DEFECTIVE ALLEGATIONS. — Bill seeks to restrain directors from doing certain illegal acts. It alleges, *inter alia*, that the defendants own a controlling interest in the stock and that protests have been made. It did not allege that such protests were made by or on behalf of the plaintiff or any other stockholder. Preliminary injunction refused, since it did not appear what particular efforts had been made by plaintiff to secure action by the directors, nor the causes of his failure to obtain relief from them. *Weidenfeld* v. *Allegheny & K. R. Co.*, 47 Fed. Rep. 11.

CRIMINAL LAW BURGLARY — INTENT. — Accused proposed to X to rob the store of M, X's father-in-law. X, with the connivance of M, consented, in order to secure the conviction of accused. After dark they went together to the store; X broke in; accused remained outside, took a piece of bacon that X handed out, and carried it off. *Held*, that these facts did not warrant a conviction of burglary. Accused was not guilty independently, because he did not himself enter; nor was he guilty as a principal in the second degree, because X, whom he was aiding, had no felonious intent. *State* v. *Hayes*, 16 S. W. Rep. 514 (Mo.).

CRIMINAL LAW — INTOXICATING LIQUORS — DRUGGIST'S LICENSE. — Under a statute declaring that the term "spirituous and intoxicating liquors" shall be held to include all "mixed liquors" and all "mixed liquor of which a part is spirituous and intoxicating," liquors spirituous and intoxicating do not lose their identity as such when compounded with drugs or chemicals for use as medicine, or in commerce or the arts. And the fact that an individual has been licensed as a druggist or pharmacist does not entitle him to use spirituous or intoxicating liquors in compounding the medicine which he sells, without first obtaining the proper license for the sale of spirituous and intoxicating liquors. *State* v. *Gray*, 22 Atl. Rep. 675 (Conn.).

CRIMINAL LAW — JURISDICTION — OFFENCE INCLUDED IN ANOTHER. — The offence charged in an indictment determines the jurisdiction. The circuit court of Florida having original jurisdiction over assaults with intent to kill, but not over simple assaults, may nevertheless find a prisoner charged with assault with intent to kill, guilty of simple assault; and a statute giving such power does not violate the constitutional provision that circuit courts shall have jurisdiction over offences *not cognizable* by inferior courts. *Winburn* v. *State*, 9 So. Rep. 694 (Fla.).

CRIMINAL LAW — PREVIOUS ACQUITTAL — COLLATERAL ATTACK. — Proof of a previous acquittal for the same offence will discharge a prisoner, when the first prosecution was commenced *bona fide*, although the acquittal was obtained by bribing the prosecuting attorney; but such acquittal will be of no avail if the prosecution was *begun* by collusion with the prisoner, in order that he might be tried at a time favorable for his escape. *Shideler* v. *State*, 28 N. E. Rep. 537 (Ind.).

DAMAGES — LEASE — BREACH OF COVENANT TO DELIVER UP IN REPAIR. — Lessee in breach of his covenant with lessor failed to deliver up the premises in good repair. The lessor, however, had made a new lease of the premises to a third party, to take effect at the expiration of the old lease, the new lessee covenanting to lay out £200 in making alterations in the house, in order to throw it into connection with the adjoining houses. In altering the house he tore down the parts left out of repair by the original lessee, who is now sued for breach of his covenant. The lessor sustained no actual damage. *Held*, the measure of damages for breach of the covenant is the amount required to put the premises into such repair as was originally contemplated by the covenant. *Joyner* v. *Weeks*, 39 W. R. 583 (Eng.).

EQUITY — INJUNCTION — ATTEMPT TO ANTICIPATE. — When upon receiving notice of motion for an injunction to restrain him from building, the defendant immediately puts on a gang of extra men and builds forty feet before receiving notice that an *ex parte interim* injunction has been granted: *Held*, that upon the motion coming on the court will immediately enjoin the defendant from allowing the wall to remain without awaiting the result of the trial. *Daniel* v. *Ferguson* [1891] 2 Ch. 27.

EVIDENCE — JUDICIAL NOTICE — PATENTS. — Courts will not take judicial notice of patents for inventions. *Bottle Seal Co.* v. *De La Vergne Bottle & Seal Co.*, 47 Fed. Rep. 59.

JURISDICTION — CIRCUIT COURTS OF APPEAL — CHINESE EXCLUSION ACT. — A case involving "the application of the Chinese restriction acts to Chinese merchants domiciled in the United States who temporarily leave the country for purposes of business or pleasure *animo revertendi*, in the light of the treaties between the government of the United States and that of China," presents a question of such importance as will justify the Supreme Court in requiring the Circuit Court of Appeals to certify the case to it for review, under Act Cong. March 3, 1891. *Ex parte Law On Bond*, 12 Sup. Ct. Rep. 43.

LIBEL — PRIVILEGED OCCASION — The defendant dismissed the plaintiff from its services on account of gross neglect of duty. A statement by the defendant to its servants of the reason for plaintiff's dismissal is a privileged communication, the servants having an interest in knowing what conduct would render them liable to removal, and the defendant being equally interested in having them know what degree of diligence was expected of them. The occasion being privileged, the communication is, unless the plaintiff can show that it was malicious. *Hunt* v. *The Great N. W. Ry. Co.* [1891] 2 Q. B. 189 (Eng.)

MORTGAGES — PRIVITY. — A chattel mortgage is, at the suit of firm creditors, declared void as to part of the debt. Can a second mortgagee claim the property after the payment of that part of the debt which is held good, or only after the payment of the whole debt? *Held*, that the second mortgagee may have the benefit of the amount of deduction of the first-mortgage debt, Winslow, J., dissenting. *Hibbard & Co.* v. *Cribb*, 49 N. W. Rep. 823 (Wis.).

PARTNERSHIP — NON-TRADING — BILLS AND NOTES. — A partnership formed for the purpose of conducting a theatre is a non-trading partnership, in respect to the presumption that one of the partners has no authority to give a firm note. *Pease* v. *Cole*, 22 Atl. Rep. 580 (Conn.).

PRACTICE — SUSPENSION OF SENTENCE — GOOD BEHAVIOR OF DEFENDANT. — Courts have no power to suspend sentence except for short periods pending the determination of motions or considerations arising in the cause after verdict. Indefinite suspension during good behavior of defendant is an exercise of pardoning power not possessed by the courts. *U. S.* v. *Wilson*, 46 Fed. Rep. 748.

PROPERTY — RIGHT OF POSSESSION OF DEAD BODY. — A wife may maintain an action against one who mutilates the dead body of her husband, and recover damages for her mental sufferings caused thereby. The court recognizes that there is no property in the commercial sense in a corpse, but holds that the surviving wife has the right of possession for the purposes of preservation and burial. *Larson* v. *Chase*, 50 N. W. Rep. 238 (Minn.). See p. 285.

REAL PROPERTY — A devise to A "for his life and the life of his heir" gives A an estate for two lives, the second life not being capable of identification, however, until the death of A. *In re Amos* [1891] 3 Ch. 159.

REAL PROPERTY — DISTURBANCE OF EASEMENTS — MEASURE OF DAMAGES. — Plaintiff bought land in New York abutting upon a street through which defendant company was already operating an elevated railway; but defendant had never exercised its right of condemning the easement to light, air, and access to and through the street which was appurtenant to the piece of land in question. In an equitable action to enjoin defendant perpetually from disturbing this easement: *Held*, that the measure of damages upon payment of which the court would allow defendant to condemn and purchase the easement was the difference between the value of the land with and without the elevated railroad. It was immaterial whether or not plaintiff had paid for the land a reduced price proportioned to the depreciation which had already taken place when she bought it. *Pappenheim* v. *Metropolitan Elevated R.R. Co.*, 28 N. E. Rep. 518 (N. Y.).

REAL PROPERTY — INTERFERENCE WITH EASEMENTS — COMPENSATION TO ABUTTERS. — Although, where the fee of a street is in the public, the Legislature may authorize a steam railroad to be laid along the grade of the street without providing for compensation to abutting owners, yet where the railroad company raises its tracks upon a stone embankment across which the public cannot conveniently pass, it is liable in damages to the abutters for the disturbance of their

easement to a free and reasonable use of the street. *Reining* v. *N. Y. L. & W. R.R. Co.*, 28 N. E. Rep. 640 (N. Y.).

REAL PROPERTY — TENANCY BY ENTIRETY — EFFECT OF DIVORCE. — On the termination, by an absolute divorce, of a tenancy by entirety created by a conveyance to husband and wife, the grantees hold as tenants in common without survivorship. *Steltz* v. *Shreck*, 28 N. E. Rep. 510 (N. Y.).

TAXATION — ELECTRIC COMPANIES — NOT MANUFACTURING COMPANIES. — A company generating electricity and selling it to customers for power, heating, or illuminating purposes is not a manufacturing company and thus within an act exempting manufacturing companies from taxation. *Com.* v. *Northern Electric Light & Power Co.*, 22 Atl. Rep. 839 (Pa.).

The analogy to gas companies is noted, and a distinction drawn between companies dealing in natural and in artificial gas. 89 N. Y. 409; 108 Pa. St. 111, cited.

TORT — INFRINGEMENT OF STATUTE FOR EXEMPTION OF DEBTOR — CIVIL ACTION. — A statute in Indiana exempts from garnishment the wages, for more than one month, of any person with less than $200; with an added provision that the attempt of a creditor to evade the law by prosecuting claims against such person in another State, whether directly or through another party, shall be criminally punishable by fine. *Held*, that where a creditor violates the latter provision, he is civilly liable to the debtor thus deprived of his exemption. *Kestler* v. *Kern*, 28 N. E. Rep. 726 (Ind.).

TRUSTS — PRIOR EQUITY — PURCHASE FOR VALUE. — B holding shares in trust for the plaintiffs pledged them with the defendant for a private debt. The defendant had no notice of the trust. After learning of it he applied to the company, which had been notified of the trust, to have the transfer registered. By the articles of association, no transfer of stock could be made unless approved by the directors. Upon this ground, *held*, that the plaintiff's prior equity must prevail. The second claimant must be able to show a complete legal title, or at least that all the formalities have been complied with, so that nothing more than a purely ministerial act remains to be done. *Moore* v. *North Western Bank* [1891] 2 Ch. 599.

This case adopts the true test, and is plainly distinguishable from *Dodds* v. *Hills*, 2 Hem. & Mill. 424. In that case the company could not object to the transfer of the shares, and accordingly the pledgee immediately upon the transfer of the certificates to himself got a complete legal right — an irrevocable power of attorney which entitled him to demand absolutely the transfer to himself upon the books of the company. Here he got no such complete legal right, and the company could not approve the transfer without assisting in the fraud.

TRUSTS — PRIOR INCUMBRANCE — REPRESENTATIONS OF TRUSTEE. — A, with a view to making a loan to the cestui, inquired of the trustee as to the incumbrances already upon the trust funds. The trustee mentioned certain incumbrances, but failed to mention others of which he had been notified, but which he did not at the moment recollect. A made the loan, relying upon the representations of the trustee. The security, owing to the prior incumbrance, of which A had not been notified, proved valueless. *Held*, that, in the absence of representations amounting to estoppel, A cannot make the trustee liable for his loss. *Derry* v. *Peek* (14 App. Cas. 337) decides that a person is not liable for mere negligent misrepresentations. A trustee owes no duty to the cestui to assist him in incumbering the trust fund. *Low* v. *Bouverie* [1891], 3 Ch. 82.

WILLS — DEBENTURE STOCK. — A bequest of all a testator's shares in a public company will not carry debenture stock. *Bodman* v. *Bodman*, 40 W. R. 60 (Eng.).

WILLS — DEBT OF LEGATEE TO THE ESTATE.— The testator gave property to his executors as trustees, to be converted into money, and he directed that after paying debts, etc., the trustees should pay certain shares of the residue to legatees named. The legatees owed to the testator debts barred by the Statute of Limitations. *Held*, that the trustees should deduct these debts from the shares to be paid to the legatees, although the residue comprised the proceeds of real estate as well as of personal property. *In re Akerman* [1891] 3 Ch. 212.